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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/748,737	12/30/2003	Freda E. Robinson	HC12U-US	2702
60723 7590 06/24/2009 AVON PRODUCTS, INC. AVON PLACE SUFFERN, NY 10901				
EXAMINER				
GHALL, ISIS A D				
ART UNIT		PAPER NUMBER		
1611				
NOTIFICATION DATE		DELIVERY MODE		
06/24/2009		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PATENT.DEPARTMENT@AVON.COM

### Office Action Summary

**Application No.**

10/748,737

**Applicant(s)**

ROBINSON ET AL.

**Examiner**

Isis A. Ghali

**Art Unit**

1611

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 April 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-12, 15, 16, 19-24 and 29-32 is/are pending in the application.
- 4a) Of the above claim(s) 1-12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 15, 16, 19-24, 29-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

Receipt is acknowledged of applicants' amendment filed 03/18/2009, and request for RCE filed 04/07/2009.

Claims 13, 14, 17, 18, 25-28 have been canceled, and claims 29-32 have been added.

Claims 1-12 and 15, 16, 19-24, 29-32 are pending.

Claims 1-12 have been previously withdrawn from consideration as being directed to non-elected invention.

Claims 15, 16, 19-24, 29-32 are included in the prosecution.

#### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action

has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 04/07/2009 has been entered.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claim 19 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 19 is directed to the silicone elastomer in an amount of about 0.01 to about 1%, which does not have support in the specification as originally filed. The examiner notes page 8 of the specification provides support for 1% but not for about 1% which includes values such as 0.9%.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 15, 16, 19-24, 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Robinson et al. (US 2003/0049212) in view of Puchalaski, Jr. et al. (US 4,690,818).

Robinson teaches skin composition comprising 0.1-30% silicone elastomer, 0.5-10% emulsifier, surfactant, and 1-95% water (abstract; paragraphs: 0075, 0133, 0137; claims 1, 12, 14). The composition useful for cleansing can be formulated as rinse off cleansing such as shampoos, or can be hair conditioners (paragraph 0213).

Advantageously, the silicone elastomer is dimethicone/vinyl dimethicone crosspolymers (paragraph 0089; claim 11). The emulsifier preferably has HLB value of 2 to 14 (paragraph 0159). The emulsifier can be polyglyceryl ester of  $C_1$ - $C_{30}$  fatty acids and sucrose fatty acid esters (paragraphs 0168, 0192). The surfactant is cationic, anionic, zwitterionic or amphoteric surfactant, and present in amount of 5-10% (paragraphs 0169, 0193, 0212).

Although Robinson teaches polyglyceryl ester of  $C_1$ - $C_{30}$  fatty acids, however, the reference does not explicitly teach PEG-7-glyceryl cocoate as instantly claimed by claim 24 and 29.

Puchalaski teaches cleansing composition that can be in the form of shampoo comprising PEG-7-cocoate in to promote good feel and adjust viscosity of the composition (abstract; col.2, lines 56-63; examples 1 and 2).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide shampoo comprising dimethicone/vinyl dimethicone crosspolymers, emulsifier including polyglyceryl ester of  $C_1$ - $C_{30}$  fatty acids, surfactant and water as taught by Robinson, and utilize the fatty acid ester PEG-7-cocoate taught by Puchalaski. One would have been motivated to do so because Puchalaski teaches that PEG-7-cocoate promotes good feel and adjusts viscosity of shampoo composition. One would reasonably expected formulating cleansing shampoo composition comprising dimethicone/vinyl dimethicone crosspolymers, PEG-7-cocoate, surfactant and water wherein the composition has good feel and acceptable viscosity.

8. Claims 15, 16, 19-24, 30, 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Robinson et al. (US 2003/0049212) in view of the article by Garruto (Specialty Esters for Aqueous Systems).

Robinson teaches skin composition comprising 0.1-30% silicone elastomer, 0.5-10% emulsifier, surfactant, and 1-95% water (abstract; paragraph 0075, 0133, 0137; claim 1, 12, 14). The composition useful for cleansing can be formulated as rinse off cleansing such as shampoos, or can be hair conditioners (paragraph 0213). Advantageously, the silicone elastomer is dimethicone/vinyl dimethicone crosspolymers (paragraph 0089; claim 11). The emulsifier preferably has HLB value of 2 to 14 (paragraph 0159). The emulsifier can be polyglyceryl ester of C<sub>1</sub>-C<sub>30</sub> fatty acids and sucrose fatty acid esters (paragraphs 0168, 0192). The surfactant is cationic, anionic, zwitterionic or amphoteric surfactant, and present in amount of 5-10% (paragraphs 0169, 0193, 0212).

Although Robinson teaches polyglyceryl ester of C<sub>1</sub>-C<sub>30</sub> fatty acids, however, the reference does not explicitly teach PEG/PPG-8/3 laurate or polyglycerol-3-laurate as instantly claimed by claim 24, 30 and 31.

Garruto teaches fatty acid esters suitable for hair and skin compositions and include polyglycerol-3-laurate and PEG/PPG-8/3 laurate that have super moisturizing and emollient properties and compatible with aqueous system (see the provided article).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide shampoo comprising dimethicone/vinyl dimethicone crosspolymers, emulsifier including polyglyceryl ester of C<sub>1</sub>-C<sub>30</sub> fatty acids,

surfactant and water as taught by Robinson, and utilize the fatty acid ester polyglycerol-3-laurate and PEG/PPG-8/3 laurate taught by Garruto. One would have been motivated to do so because Garruto teaches that polyglycerol-3-laurate and PEG/PPG-8/3 laurate provide moisturizing and emollient properties to shampoo and skin care compositions. One would reasonably expected formulating cleansing composition such as shampoo comprising dimethicone/vinyl dimethicone crosspolymers, polyglycerol-3-laurate and/or PEG/PPG-8/3 laurate, surfactant and water wherein the composition has moisturizing and emollient effect.

9. Claims 15, 16, 19-24, 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Robinson et al. (US 2003/0049212) in view of Mercier et al. (US 7,488,471).

Robinson teaches skin composition comprising 0.1-30% silicone elastomer, 0.5-10% emulsifier, surfactant, and 1-95% water (abstract; paragraph 0075, 0133, 0137; claim 1, 12, 14). The composition useful for cleansing can be formulated as rinse off cleansing such as shampoos, or can be hair conditioners (paragraph 0213). Advantageously, the silicone elastomer is dimethicone/vinyl dimethicone crosspolymers (paragraph 0089; claim 11). The emulsifier preferably has HLB value of 2 to 14 (paragraph 0159). The emulsifier can be polyglyceryl ester of C<sub>1</sub>-C<sub>30</sub> fatty acids and sucrose fatty acid esters (paragraphs 0168, 0192). The surfactant is cationic, anionic, zwitterionic or amphoteric surfactant, and present in amount of 5-10% (paragraphs 0169, 0193, 0212).



Although Robinson teaches sucrose fatty acid esters, however, the reference does not explicitly teach sucrose laurate as instantly claimed by claim 24, and 32.

Mercier teaches cosmetic composition containing emulsifying fatty acid esters having HLB from 11-16 including sucrose laurate (abstract; example 2; claim 1). Such emulsifier is exceptionally mild and less irritating to the skin and eyes and surprisingly has skin moisturizing effect (col.2, line 62 till col.3, line 5). Emulsifiers are utilized in hair conditioners and gels (col.4, lines 62-66).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide shampoo comprising dimethicone/vinyl dimethicone crosspolymers, emulsifier including sucrose fatty acid esters, surfactant and water as taught by Robinson, and utilize sucrose laurate taught by Mercier. One would have been motivated to do so because Mercier teaches that sucrose laurate is exceptionally mild and less irritating to the skin and eyes and surprisingly has skin moisturizing effect. One would reasonably expected formulating cleansing composition such as shampoo comprising dimethicone/vinyl dimethicone crosspolymers, sucrose laurate, surfactant and water wherein the composition is mild, non-irritating to skin and eye and further has moisturizing effect on the skin.

### ***Response to Arguments***

10. Applicant's arguments with respect to claims 15, 16, 19-24, 29-32 have been considered but are moot in view of the new ground(s) of rejection.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Isis A. Ghali whose telephone number is (571) 272-0595. The examiner can normally be reached on Monday-Thursday, 6:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sharmila Landau can be reached on (571) 272-0614. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Isis A Ghali/  
Primary Examiner, Art Unit 1611

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